19/19.

**File No.** O. Finance/49

Legal Department.

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**Subject:–**

Opinions - Under the Bombay Finance Act 1932.

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MVY. 7/6.

Office of the R.L.A.

Under section 20(v) of the Bombay Finance Act, 1932, Part VI of the Act applies to the limits of Cantonments of Ahmedabad, Poona and Kirkee. Section 23 in that Part provides that the urban immoveable property tax shall not be leviable in respect of the building mentioned in the clauses (a) to (d). Clause (c) specifies among others buildings belonging to a Municipality or a Local Board or a Cantonment Board and used solely for public purposes and not used or intended to be used for purposes of profit. It is clear from these provisions that the buildings owned by Cantonment Boards would be liable to the urban immoveable property tax unless such buildings ~~in~~ are used solely for public purposes and not used or intended to be used for purposes of profit. The buildings in the Poona Cantonment and the Kirkee Cantonment areas, which according to the Collector are liable to the urban immoveable property tax, are specified in the list at p. 3 ante. The Boards are claiming exemption from the urban immoveable property tax on the ground that the Cantonments are under a statutory duty to maintain buildings such as markets, slaughter houses, cycle stands, etc., for the benefit of the public residing within the limits of the Contonments and these buildings having been put up for the purposes of the convenience of the public and not being intended for purposes of profit and whatever income is derived therefrom being used for the maintenance of staff that looks after the purposes for which these buildings are erected, they are exempt from the urban immoveable property tax.

2. In order to get an exemption from the tax, three conditions must be fulfilled:

(1) the buildings must belong to the Cantonment Board

(2) they must be used solely for public purposes, and

(3) they must not be used or intended to be used for purposes of profit.

Unless all three conditions meet the case, it would not be covered by clause (e)(ii). Therefore, the mere fact that the Cantonment Boards are required to erect markets, slaughter houses, cycle stands, etc., for the benefit of the public would not be sufficient for getting exemption from the tax. The expression "not used or intended to be used for purposes of profit" has been frequently construed in the past (see R.L.A's opinions No. 1833 dated 7-6-1927 and No. 0. Munis. Cities-8 dated 23-3-1928, Advocate General's opinions No. 77 and 87 of 1928; and finally R.L.A's opinion No. 4998 dated 29-8-1935). As pointed out in the last quoted opinion (No. 4998 of 29-8-1935), this expression has certainly a sense different from such an expression as "used so as to result in a profit": the difference is between user with the object of making profit and user resulting in profit, however unimportant or trivial. If, therefore, the Cantonment Boards are deriving rent from these buildings and allow their use with the intention of making profit in this sense, then the buildings would be deemed to have been used or intended to be used for purposes of profit, however small the rent may be. But, if the intention of the Board is merely to allow the use of these buildings primarily for public purposes and incidentally the Board levies some fees or nominal rents sufficient for the purpose of meeting the maintenance charges of these buildings, the Board can claim exemption from the urban immoveable property tax in respect of such buildings. It is a question for investigation upon facts whether the buildings or any of them are or are not used or intended to be used for purposes of profit in the sense explained above.

Sd/- P.M. LAD,

Remembrancer of Legal Affairs.

U.R. to R.D., No. 5030, dated the 7th May 1949.

Issued

C.S.P. - 7/6

RVY. 7/6.

Office of the R.L.A.

Exemption from Urban Immovable property tax.

Bombay Fiance Act, 1932 S. 23(a)

The law regarding exemption from the Urban Immovable Property tax is contained in Section 23 of the Bombay Fiance Act. According to clause (e) of that section open lands within the limits of the Bombay Suburban and Thana District are exempted from the levy and expression "open land" is defined as land which is not built upon or enclosed: vide explanation 3 to section 23. Whether the land is enclosed or not is a question of fact. Consequently if the land of the Golf Club, was kept open without a fence it would not be liable to the tax. As regards requisitioned land, it would be liable to the tax if it was enclosed or built upon subsequent to its requisition by the Govt., but in case it was not done so it would be exempt from the Urban Immovable Proerty tax on the ground that it was open land and the fact that the Club received rent in respect thereof would not affect the legal position.

Sd/- P.M.LAD,

Remembrancer of Legal Affairs.

U.R. to R.D., No. 8502, dated 27th July 1949.

Submitted for signature.

Id/- / 26/7

A.A.S. Id/- 26/7

A.L.R. R.K. - 26/7

R.L.A.

Issued

C.S.P.- 27/7.

KVY. 7/6.

Office of the R.L.A.

Newspaper advertisement tax.

Bombay Fianance Act, 1932. Section 32.

In connection with the levy of the newspaper advertisement tax, the Finance Department states that there are three types of cases which are likely to arise in respect of outsides newspapers:

(i) newspapers printed and published outside and brought for sale or circulation in this Province;

(ii) newspapers printed in this Province but formally published outside, copies of which are brought for sale or circulation in this Province; and

(iii) newspapers printed and published in Provinces more than one.

The R.L.A. is requested to advise whether all or any of these newspapers would be liable to the advertisement tax under section 32 of the Bombay Finance Act, 1932.

Section 32 of the Bombay Finance Act, 1932, as amended by Bombay Act II of 1949, provides that there shall from the first day of April 1949 be levied and paid to the Government of Bombay a tax at the rate of one anna in the rupee paid or payable in respect of any advertisement appearing in any newspaper published in the Province of Bombay. It is clear from this provision that the liability for the payment of the advertisement tax will arise only when the newspaper is published in the Province of Bombay. In Mc Farlance v. Hulton (1899, 1 Chancery page 884) Cozens-Hardy J. observed at pages 888-889:

"What is the meaning of 'publishing a newspaper'? It is plainly something different from printing it. I see no reason why a newspaper should not be published in more than one place .... It seems to me that a paper is published when and where it is offered to the public by the proprietor .... Where a newspaper proprietor has two offices, one in

Manchester and the other in London, at each of which he offers for sale or distribution copies of his paper, the paper is 'published' at each office."

Applying these observations to the present case, it is clear that newspapers falling under the first category would not be liable to the advertisement tax since they are printed and published outside the Province and the fact that they are brought for sale or circulation within the Province would not make any difference. The newspapers falling under the second category also would not be liable to the advertisement tax since they are published outside the Province and the fact that they are printed and brought for sale or circulation within the Province is immaterial. Newspapers falling under the third category would be liable to the advertisement tax since it is possible that newspapers may have more than one publishing office and the fact that they are published within the Province is sufficient to make them liable to the tax.

Sd/- P.M.LAD,

Remembrancer of Legal Affairs.

U.H. to F.D., 9865, dated the 31st August 1949.

Submitted for signature.

Id/- 30/8

A.A.S. Id/- 30/8

A.L.R. R. K. 30/8.

R.L.A.

Issued

C.S.B. 31/8.

KVV-7/6.

Office of the R.L.A.

Advertisement tax on advertisements inserted free of charge.

Bombay Finance Act, 1932. Sections 32.

It appears that "Philatelic Exporter" and "India's Stamp Journal" have published their advertisements in exchange that is to say without payment for the advertisements. The question raised for the R.L.A. for consideration is whether the tax is payable under section 32 of the Bombay Finance Act , 1932 even though no charges for the advertisement are paid by either.

2. Section 32 of the Bombay Finance Act, 1932 provides that there shall from the 1st day of April 1949 be levied and paid to the Government of Bombay a tax at the rate of one anna in the rupee paid or payable in respect of any advertisement appearing in any newspaper published in the Province of Bombay. It is clear from this provision that the advertisement tax can be levied on the amounts paid or payable in respect of the advertisements appearing in any newspaper published in this province. No doubt x when the advertisements are published free in exchange, no amount is paid but the words used in section 32 are "paid or payable". The word "payable" is a descriptive word meaning capable of being paid; suitable to to be paid; admitting or demanding payment; justly due; legally enforceable. (Iyer's Law Lexicon p. 956). It is only by way of mutual agreement that the advertisement charges are not paid. But undoubtedly they are capable of being paid or legally enforceable although they can be set off. Consequently these advertisement charges can be construed to be payable although they are not paid by mutual agreement. It would, therefore, be competent for Government to levy the advertisement tax on the basis of the charges payable for such advertisements.

Sd/- P.M. LAD,

Remembrancer of Legal Affairs.

U.R. to F. ., No. 10617, dated the 20th Septemebr 1949.

Issued

Office of the B.L.A.

In the case of the Province of Bombay v. Shri Ramkrishna Mills Co. Ltd., the High Court held that section 22 of the ix Act, as it then stodd, merely provided that where there is a building consisting of more than one tenement, even if such separate tenements are separately assessed to property tax, the new tax shall be assessed on the annual letting value as whole, that it did not go further on providing that where separate buildings are connected together for the purposes of business, the assessment shall be made on the annual letting value of all the buildings taken together. It is to meet this decision that the second proviso was inserted by Act No. VIII of 1947. The words "same locality" were inserted in the proviso after discussion with the Special Officer, P.D., who then stated that Government's intention was to asses the buildings situate in one and the same compound but not buildings which are situate at different places. It will be observed that sections 22 and 24 in terms refer to the area of the municipality so that there is no scope whatsoever for interpreting the expression "in the same locality" so widely as to embrace the entire area of the municipality. The word "locality" is defined in Dr. Murray's New English Dictionary Vol. 6 p. 380 to mean a place of undefined extent considered as the site occupied by certain persons of things. In Webster's Dictionary of Synonyms, it is mx stated that "locality" as distinguished from district, vicinage, vicinity, neighbourhood, applies to a region of undefined boundaries, but it usually suggests an area round the centre such as the place where a person lives. The proviso will be strictly construed as it is a taxing measure. In the context in which the expression "in the same locality" occurs, it is xhmx apparent that by the word "locality" is meant the place occupied by buildings or group of

buildings. Buildings which are so far apart as not to be considered in relation to one centre or as occupying a particular site will not be included within the scope of that expression. The proviso was directed at buildings which happen to be in one particular centre i.e. which are connected by contiguity. It was not intended for the purpose of treating as one unit buildings which though owned by one person may be situated in diver-- places in a ward or in the municipal area.

Sd/- P.M. LAD,

Remembrancer of Legal Affairs.

U. R. to R.D., No. 12077, dated 28th October 1949.

Issued

C.S.P.
28/10

Submitted.

2. The amendments have been carried out in the F.C.

Id/-
28/10

A.A.S. (for information)

Id/- 28/10

RVK. 7/6.

Bom. Finance Act, 1932 Sections 22 and 23. Poonas Municiaplity. Reduction of Urban Immoveable Property tax. Pari Passu.

It appears that Government has decided to give an assurance to the Poona Municipality that Government would consider the question of reducing the rate of the levy of its urban immoveable property tax in Poona correspondingly if and when the Municipality raises its house tax. In view of this decision, the question raised for the R.L.A's consideration is whether under the Urban Immoveable Property Tax Act the tax could be abolished altogether.

Part VI of the Bombay Finance Act, 1932, which provides for the levy of the Urban Immoveable property tax, has been extended to certain municipalities, one of which is the Poona City Municipality. Section 22 in Part VI provides:

> "There shall, subject to the provisions of section 23, be levied and paid to the Provincial Government a tax on buildings and lands herewith-inafter called the urban immoveable property tax at such rate not exceeding 7 per cent. of the annual letting value of the buildings or lands in such area or areas as may be notfied by the Provincial Government in the Official Gazette."

It is clear from this provision that the levy of the urban immoveable property tax is mandatory. The only power which is left to Government is to very the rates within the maximum limit of 7 per cent. of the annual letting value of the notified in the Official Gazette. The power to vary the rate within the aforesaid maximum limit is delegated to Government. The power to prescribe the rate within the maximum limit does not include power to refuse to prescribe any rate at all on

the plea that such refusal amounts to zero rate. The abolition of the urban immoveable property tax on lands and buildings in the Poona munipal area would be tantamount to refusal to prescribe any rate which, being in disobedience of the mandate of the Legislature, would be ultra vires. Consequently, it would not be competent for Government to abolish the urban immoveable property tax in the Poona Municipal area without amending section 20 by excluding the Poona City Minicipality from the provision.

Sd/- P.M. LAD,

Remembrancer of Legal Affairs.

U. R. to H. & L. G. D. No. 11048, dated the 4th October 1949.

Submitted for signature.

Id/-
2/10

A.A.S. Id/-
2/10

. R.L.A.

Issued

C.S.P.
4/10.

EVI. 7/6.